

STATE OF RHODE ISLAND
BEFORE THE STATE LABOR RELATIONS BOARD

In the MATTER of	:	
	:	
TOWN OF BRISTOL, R. I.	:	
	:	
- and -	:	CASE NO. EE-3083
	:	(UNIT CLARIFICATION)
UNITED STEELWORKERS OF AMERICA	:	

D E C I S I O N

- and -

O R D E R

The above matter comes before the Board on a request by the Town of Bristol seeking a Labor Board investigation and clarification of a position heretofore included in the clerical bargaining unit represented by the United Steelworkers of America, Local 14852-A. The position in question is the Secretary to the Town Administrator. The Town of Bristol (hereinafter referred to as the Petitioner) seeks to have the Town Administrator's secretary removed from the bargaining unit on the grounds, among other things, that she is a confidential secretary and receives confidential information relative to the bargaining process. They argue that as an elected officer, the Town Administrator, makes collective bargaining policy, adjusts grievances, establishes economic goals to be accomplished in the bargaining process, and participates in the bargaining process.

Pursuant to a Consent Election held on September 2, 1975, the Rhode Island State Labor Relations Board certified the United Steelworkers of America (hereinafter referred to as the Respondent) as the certified collective bargaining representative for ---"all clerks and secretaries employed at the Town Hall, 10 Court Street, Bristol, Rhode Island, excluding clerks and secretaries employed by the Police Department."

The Board held evidentiary proceedings and certain witnesses were produced by the Petitioner in support of its position that the secretarial position should be removed from the bargaining unit.

the Town Administrator's secretary is involved with these types of duties.

Rather, it argues that since this has been a bargaining unit position since September of 1975, and that the duties and responsibilities of the position have not substantially changed since that time, that this is sufficient to warrant the position remaining in the unit irrespective of the fact that the Petitioner wants the job removed for the foregoing reasons.

The Board believes that the Petitioner has shown (and the Respondent does not dispute) that the Secretary to the Town Administrator is a confidential employee. The duties outlined by the Petitioner in connection with this position clearly shows that to be a fact.

The Board believes the most crucial issue involved in this case involves an interpretation of Rhode Island General Laws 28-7-9(c) which provides as follows:

"A petition for unit clarification may be filed at anytime with the Board by (1) an exclusive bargaining agent, or (2) the applicable municipality, or (3) the State where appropriate."

This statute effectively changed the procedure under which unit clarifications could previously be filed with the Board. Prior to the enactment of this statute, the Board only allowed unit clarifications to be filed within the 60-90 day period prior to the expiration of a collective bargaining agreement. The statute in question contains no such limitations on when a unit clarification may be filed. Thus, the Petitioner argues that absent such a restriction, its petition is, in fact, timely. As the transcript discloses, Mr. McAndrew, the Petitioner's attorney, requested this unit clarification on July 1st and July 29th, which letters were marked as Petitioner's Exhibits No. 1 and 1A respectively.

The transcript shows that the parties bargained over and eventually reached final agreement on a collective bargaining contract which agreement

collective bargaining agreement until such time as the Rhode Island State Labor Relations Board had an opportunity to rule on the Petitioner's petition for clarification. Rather, the transcript shows that the parties finalized their negotiations by the signing of a new collective bargaining agreement, which agreement included, among other things, the controversial position in question.

The Board is thus faced with the basic question of determining whether the Petitioner has shown that the secretarial position is, in fact, a confidential position to be excluded from the bargaining unit. Naturally, if the Board decides that the position is not one of confidentiality so as to be excluded from the bargaining unit, the petition fails and provisions of the collective bargaining agreement pertaining to this employee remain in full force and effect.

However, if the Board decides that the position is such that it is confidential, it must then decide on whether the position must immediately come out of the bargaining unit or, on the other hand, remain in the unit until the expiration of the new collective bargaining agreement.

The Board is convinced that the Petitioner has shown by a fair preponderance of the credible evidence that the position in question is a confidential position which eventually must be excluded from the bargaining unit.

The Board uses the word "eventually" because the Board is of the opinion that although the new statutory enactment allows a petition to be filed at anytime during the life of a certification, it does not, as we see it, necessarily imply that once a position is clarified (in this case clarified so as to be a confidential position) that it must immediately come out of the bargaining unit. There is no irreparable harm shown which would require the Board to act otherwise.

has, in accordance therewith, clarified the position. However, the Board in keeping with its past practices will not remove this particular position until such time as the contract expires.

As the Board has so often said, one of the basic purposes of the Rhode Island State Labor Relations Act is to create an atmosphere of harmony between the respective parties so as to encourage these parties to bargain collectively. This is exactly what happened in this case, namely, that the parties bargained and ultimately reached agreement over the terms and conditions of a new collective bargaining agreement. There were no ground rules indicating that the secretarial position would not be included within the contractual language until such time as the Board had ruled on the Petitioner's petition for clarification. The parties certainly could have agreed to this but apparently it was not done.

Thus, as the Board has indicated, the position in question is a confidential position which must be removed at the expiration of the collective bargaining agreement but not at anytime before.

For the foregoing reasons, the following Findings of Fact are made.

FINDINGS OF FACT

1. The Employer, the Town of Bristol, is a municipal corporation duly organized under the Constitution and the General Laws of the State of Rhode Island, with its place of business at the Town Hall, 10 Court Street, Bristol, Rhode Island.
2. That the United Steelworkers of America is a labor organization, which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers concerning grievances or other mutual aid or protection.

3. A Consent Election was held on September 2, 1975, certifying the United Steelworkers of America as the certified collective bargaining

4. That at the time of the certification on September 8, 1975, the Secretary to the Administrator was included within the terms of that certification.

5. That from September 8, 1975, through July 1, 1985, the position of Secretary to the Town Administrator has always been included within the bargaining unit as indicated above.

6. That on July 1, 1985, the Petitioner sought to have the secretarial position removed from the bargaining unit on the grounds of confidentiality.

7. That the Petitioner and the Respondent reached agreement on the terms of a new collective bargaining agreement and signed same.

8. That the Petitioner and the Respondent did not agree to exclude the secretarial position until such time as the Board clarified it.

9. That the Petitioner's petition is a timely petition in light of Rhode Island General Laws 28-7-9(c).

10. The Town Administrator is an elected officer.

11. That as an elected officer, the Town Administrator makes collective bargaining policy, adjusts grievances, establishes economic goals to be accomplished in the bargaining process, and actually participates in the bargaining process.

12. That the Secretary to the Town Administrator is privy to confidential information and data pertaining to the bargaining process and other labor related matters.

13. That that secretarial position is a confidential position.

CONCLUSIONS OF LAW

1. That the position of Secretary to the Town Administrator is a confidential position.

ORDER

That the certification heretofore issued on September 8, 1975, will remain in full force and effect and will not be amended so as to exclude the position of Secretary to the Town Administrator until such time as the present collective bargaining contract expires.

RHODE ISLAND STATE LABOR RELATIONS BOARD

S/ MICHAEL SALVADORE

CHAIRMAN

S/ RAYMOND PETRARCA

MEMBER

S/ FRANK MONTANARO

MEMBER

S/ GLENN EDGEComb

MEMBER

S/ JOSEPH MULVEY

MEMBER

Entered as Order of
the Rhode Island State
Labor Relations Board

DATED: December 19, 1985

BY: S/ JOHN H. WINTER

ADMINISTRATOR